

APPEAL NO. 010029

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 11, 2000. The hearing officer determined that the claimant's attorney's fees in the amount of \$662.50 are reasonable and necessary.

The appellant (carrier) appeals, contending that the attorney fees ordered paid do not fall within the ambit of Section 408.221(b) or Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.2(b) (Rule 152.2(b)) and that it had standing to file its dispute pursuant to Rule 152.3(e). Respondent, claimant's attorney, responds, urging affirmance.

DECISION

The carrier not having standing to bring this action, the Appeals Panel does not have jurisdiction to hear this case.

The claimant sustained a compensable injury on _____, and the carrier began payment of medical and income benefits. The claimant at some point, apparently September 13, 2000, retained the respondent attorney. Subsequently, the Texas Workers' Compensation Commission, through various orders, awarded the respondent attorney's fees in the amount of \$662.50, which were taken from the claimant's income benefits. The claimant has not objected to that action, did not appear at the CCH, and has not filed a response. The carrier, although conceding that the amount of benefits it pays are the same, nonetheless objects that the respondent attorney is not entitled to the fees awarded him, citing Section 408.221(b), which provides that a claimant's attorney's fees "shall be paid from claimant's recovery" except in supplemental income benefits cases. Rule 152.2(b) defines what "claimant's recovery" shall not include and in that list at Rule 152.2(b)(2) includes benefits initiated or offered by the carrier and not subject of a dispute by the carrier.

The carrier asserts it has standing to challenge the attorney fees paid to the claimant's attorney based on Rule 152.3(e), which states:

- (e) An attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit [CCH] shall request review by the appeals panel pursuant to the provisions of § 143.3 of this title[.]

We hold that Rule 152.3(e) only gives the carrier standing to dispute an attorney fee for which it is directly liable and not for fees paid from income benefits. As the respondent attorney points out, to hold otherwise would allow a claimant to challenge the attorney fees paid by the carrier to a carrier's attorney.

The carrier not having standing to bring this action, the carrier's appeal is dismissed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge